

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Bob Angen, d/b/a Bob
Angen Construction Services

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above matter came on for a hearing before Administrative Law Judge (ALJ) Richard C. Luis on May 16, 2005 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. At the close of the hearing, the ALJ allowed Mr. Angen time to retain an attorney and present argument as to whether the hearing should be reconvened. The ALJ received a letter brief from attorney Daniel McGrath on behalf of Mr. Angen on June 20, 2005, requesting that the hearing be reconvened. The ALJ denied the request by letter dated July 19, 2005, and the hearing record closed on that day.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared representing the Department of Labor and Industry ("the Department").^[1] Daniel S. McGrath, Esq., Steingart, McGrath & Moore, P.A., 3300 Edinborough Way, Suite 601, Minneapolis, MN 55435, represents Bob Angen ("Respondent"), 6604 Parkwood Road, Edina, MN 55436, who appeared on his own behalf at the hearing on May 16, 2005.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommended Decision. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Deputy Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to

determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Did Respondent violate Minn. Stat. § 326.84, subds. 1a and 1b, by engaging in unlicensed residential building contractor activity?

Did Respondent violate Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1.H., by failing to obtain the required building permits?

Is discipline of Respondent in the public interest?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent is a residential building contractor initially licensed by the Department on February 12, 2001.^[2]

2. In 2003, Respondent failed to complete a remodeling contract and failed to pay subcontractors on the project. Based upon a complaint from the homeowner, the Department issued a Statement of Charges in December 2003. The case proceeded to a contested case hearing. Ultimately, Respondent failed to appear at the hearing and a default was issued against him by the undersigned ALJ. The Commissioner affirmed the ALJ's recommendation and, on July 20, 2004, issued an Order revoking Respondent's license and imposing a civil penalty of \$2,000.

3. During the time the contested case proceeding was underway, Respondent submitted a Course Completion Certificate to the Department dated March 31, 2004.^[3] The certificate stated that Respondent had completed 7.5 hours of Contractor Continuing Education and 7.5 hours of Real Estate Continuing Education.

4. Respondent was experiencing marital problems and depression during this time.^[4] He often did not open the mail he received; specifically Respondent says that he did not open the Commissioner's July 20, 2004 Order revoking his license.

5. Respondent's residential building contractor license expired on March 31, 2004. Respondent did not submit a license application renewal form to the Department.

6. Respondent paid the \$2,000 fine by cashier's check on April 28, 2004.^[5] Respondent believed that he was in compliance with the Commissioner's Order and that his license was in good standing because he had completed the required training and paid the fine.

7. On June 14, 2004, Respondent entered into a kitchen and deck remodeling contract with David and Karen Grandstrand of Maple Plain, MN in the amount of \$95,000.^[6] Respondent maintains that when he presented plans for the remodeling to Maple Plain city officials, he was told no permit was needed for the work.^[7]

8. In October 2004, Respondent had failed to pay suppliers and contractors in connection with the Grandstrand project, and as a result, Lampert's Lumber placed a lien on the Grandstrand's property. When Respondent issued a payment to Lampert's Lumber the following month, the check was returned for insufficient funds.

9. Mr. Grandstrand became concerned, and in December 2004, he filed a complaint against Respondent with the Department. The Department's investigation into the complaint confirmed that Respondent had not obtained a permit for the Grandstrand project.^[8] According to Maple Plain city officials, Respondent misrepresented the scope of the project by saying that he was only replacing the kitchen cabinets.^[9]

10. The Department issued a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges to Respondent on February 24, 2005. The Prehearing Conference occurred on April 6, 2005, at which time the Administrative Law Judge set the hearing for May 16, 2005.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 45.027, 326.91, and 14.50.

2. The Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all procedural requirements of law.

4. The Department must prove by a preponderance of the evidence that the alleged violations occurred.^[10]

5. Minn. Stat. § 326.84, subds. 1 and 1b require residential building contractors and residential remodelers to be licensed. Residential building contractors and residential remodelers may not perform work without a valid license. Subdivision 1a of section 326.84 provides that specialty contractors may be licensed as residential building contractors or residential remodelers unless they are required to be licensed as a specialty contractor.

6. A residential building contractor contracts to build or improve residential real estate by providing two or more special skills, including carpentry, masonry and concrete, interior finishing, exterior finishing, drywall and plaster, and roofing.^[11] A residential remodeler also provides two or more special skills, but only in the context of improving residential real estate.^[12] A specialty contractor both builds and/or improves residential property, but by providing only one special skill.^[13]

7. A licensed residential contractor is prohibited from engaging in fraudulent, dishonest, or deceptive practices, such as performing any construction without obtaining applicable local building permits and inspections.^[14] The Department has proved by a preponderance of the evidence that Respondent engaged in fraudulent, dishonest, or deceptive practices by performing construction without a license and without obtaining the applicable local building permits and inspections.

8. The Commissioner may deny, suspend, revoke, censure, or fine a license/licensee if the action is in the public interest.^[15] The Department has established that discipline of Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that disciplinary action be taken against the residential contractor's license of Bob Angen.

Dated this 18th day of August 2005.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Tape-Recorded.
One Tape, No Transcript Prepared.

MEMORANDUM

The Department alleges that Respondent performed residential construction work without a license. Respondent argues that because he completed the required continuing education coursework and paid the Commissioner's fine of \$2,000, he believed that his residential contractor's license was in good standing. This claim is outweighed by other facts in the record. Respondent's license expired on March 31, 2004, even before the Commissioner issued the July 2004 order. At no time following the expiration of his license did Respondent complete paperwork for the renewal of his license. Respondent had completed the licensure application process the first time in February 2001. Presumably, Respondent knew that there was more involved in renewing his license than simply submitting a certificate of coursework completion, and he knew or should have known that his license was not in good standing and current with the Department.

Respondent's contract with the Grandstrands included both kitchen and deck work that involved the use of more than one special skill. Respondent knew or should have known that he was required to be licensed as a residential building contractor or remodeler and not simply allowed to be licensed as a specialty contractor if he so chose.

As to the issue of Respondent's obtaining the necessary permit for the Grandstrand project, Respondent has not disputed the contents or the amount of the contract.^[16] The contract, signed by Respondent and the Grandstrands, clearly states that Respondent is to perform work on both the kitchen and the deck totaling approximately \$95,000. The fact that Respondent does not dispute the contract as drafted makes his testimony that the Maple Plain city officials told him he did not need a permit for the project less credible. Accordingly, the ALJ credits the hearsay testimony of Chris Williams that Maple Plain city officials were told by Respondent that he was only replacing kitchen cabinets.

R.C.L.

^[1] This action was commenced by the Department of Commerce. On May 16, 2005, the Governor signed Executive Order 193, transferring the responsibility for regulation of residential building contractors to the Department of Labor and Industry.

^[2] Ex. 1, p. 4.

^[3] Ex. 3.

^[4] Testimony of Respondent.

^[5] There was some dispute about when the Department received Respondent's payment, but ultimately, the Department stipulated to the payment and dropped Count III relating to that issue.

^[6] Ex. 2.

^[7] Testimony of Respondent.

^[8] Testimony of Chris Williams.

^[9] Testimony of Chris Williams. A project involving only the replacement of kitchen cabinets would generally not require a permit.

^[10] Minn. R. pt. 1400.7300, subp. 5.

^[11] Minn. Stat. § 326.83, subd. 15.

^[12] Minn. Stat. § 326.83, subd. 16.

^[13] Minn. Stat. § 326.83, subd. 20.

^[14] Minn. Stat. § 326.91, subd. 1(2); Minn. R. 2891.0040, subp. 1.H.

^[15] Minn. Stat. § 326.91, subd. 1.

^[16] See Ex. 2.